

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

CAROL S. ELLIS WARREN,

Plaintiff,

Case No. 15-cv-11367

v.

Honorable Thomas L. Ludington  
Magistrate Judge Patricia T. Morris

DEPARTMENT OF TREASURY,  
DEPARTMENT OF HOMELAND SECURITY, and  
AI c/o IRS MO 64999-0025,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION  
AND DISMISSING PLAINTIFF'S COMPLAINT**

On April 14, 2015, Plaintiff Ellis Warren filed a pro se Complaint alleging that the IRS withheld her tax refunds in 2013 and 2014 and did not credit her for amounts paid toward her taxes in 2004.

On May 6, 2015, Magistrate Judge Patricia T. Morris issued a report recommending that Plaintiff's Complaint be dismissed *sua sponte* because Plaintiff did not show that she filed a timely refund claim with the IRS in accordance with the jurisdictional limitations set forth in 26 U.S.C. § 7422(a). Rep. & Rec. 4-5, ECF No. 6. She noted that Plaintiff bears the burden of demonstrating, on the face of the complaint, that the administrative claim requirements of § 7422(a) were met. *Id.* at 6. Since Plaintiff did not so demonstrate, the Court is without jurisdiction to adjudicate her claims against the IRS. Judge Morris recommended dismissing those claims without prejudice. As to the Department of Homeland Security, which Plaintiff also names as a defendant, Judge Morris recommended that the complaint be dismissed for failure to

state a claim. The complaint, Judge Morris observed, contains no allegations against DHS, nor does it explain how DHS fits into Plaintiff's allegations.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 6, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's Complaint, ECF No. 1, is **DISMISSED with prejudice** as to Defendant Department of Homeland Security.

It is further **ORDERED** that Plaintiff's Complaint, ECF No. 1, is **DISMISSED without prejudice** for want of jurisdiction as to the remaining Defendants.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: July 28, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 28, 2015.

s/Karri Sandusky  
Karri Sandusky, Acting Case Manager